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HONORABLE WHITMAN L. HOLT

HEARING DATE: March 27, 2024

HEARING TIME: 10:00 A.M.

LOCATION: Tower Bldg
2nd Floor Courtroom
402 East Yakima Avenue
Yakima, WA 98901

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

ICAP ENTERPRISES, INC., et al.,

Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault

**DECLARATION OF LANCE MILLER IN SUPPORT OF JOINT
MOTION FOR ORDER AUTHORIZING SUPPLEMENTAL
DEBTOR IN POSSESSION FINANCING**

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**DECLARATION OF LANCE
MILLER IN SUPPORT OF JOINT
MOTION FOR ORDER
AUTHORIZING THE DEBTORS TO
OBTAIN SUPPLEMENTAL
POSTPETITION SECURED
FINANCING**

I, Lance Miller, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief.

1. I am Chief Restructuring Officer and/or Manager of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I am generally familiar with the Debtors’ businesses and financial affairs, and books and records. I am above 18 years of age and I am competent to testify.

2. I am authorized to submit this declaration on behalf of the Debtors. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge of the Debtors’ operations and finances, information learned from my review of relevant documents, and information I have received from the Debtors’ advisors. If I were called upon to testify, I could and would testify competently to the facts set forth herein on that basis.

3. I offer this declaration in support of the contemporaneously filed *Joint Motion of the Debtors and Committee for Order: (I) Authorizing the Debtors to Obtain Supplemental Postpetition Secured Financing; (II) Granting Superpriority Administrative Expense Claims; and (III) Granting Related Relief* (the “Motion”).²

4. The Debtors are at a point in these Chapter 11 Cases where they need additional financing to pursue value-maximizing litigation.

Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the DIP Agreement, as applicable.

**DECLARATION OF LANCE MILLER IN SUPPORT OF JOINT
MOTION FOR ORDER AUTHORIZING SUPPLEMENTAL
DEBTOR IN POSSESSION FINANCING** 2

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1 5. Based on the Debtors' books and records, bank statements, financial
2 statements, and interviews with individuals with personal knowledge of the facts and
3 circumstances surrounding the failure of the Debtors' businesses, it is my
4 understanding that, during the period prior to the Petition Date, the Debtors operated
5 as a Ponzi scheme.

6 6. As of the Petition Date, approximately of \$250 million in investor
7 claims were outstanding and owed to approximately 1,800 individual investors. A
8 successful outcome in these cases will depend on the Debtors' ability to pursue
9 avoidance claims and other litigation. The Debtors and the Committee plan to
10 cooperatively pursue these recoveries from third parties to maximize the ultimate
11 distribution to the investor creditors damaged by the Debtors' prepetition conduct.

12 7. The Debtors have limited cash resources to fund litigation efforts, and
13 will require additional financing. I believe that the relief requested in the Motion is
14 in the best interests of the Debtors, their estates, and their creditors, and, therefore,
15 should be approved.

16 8. Given their current financial condition, financing arrangements, and
17 capital structure, the Debtors are unable to obtain alternative sources of litigation
18 financing other than the DIP Lender. The Debtors are unable to procure financing in
19 the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy
20 Code, as an administrative expense under section 364(a) or (b) of the Bankruptcy
21 Code, or solely based on the grant of an administrative expense priority pursuant to
22 section 364(c)(1) of the Bankruptcy Code. The Debtors are also unable to obtain
23 secured credit allowable solely under section 364(c)(2) or 364(c)(3) of the
24 Bankruptcy Code. The Debtors have been unable to procure the necessary financing
25 on terms more favorable than the financing offered by the DIP Lender pursuant to
26 the DIP Agreement.

1 9. The Debtors spent considerable time and effort to identify favorable
2 sources of supplemental DIP financing. I have experience with litigation financing.
3 Lenders who finance specific litigation require significant amounts of diligence
4 regarding the underlying merits – diligence that requires months to complete – and
5 the pricing for that financing is significantly more expensive than the terms proposed
6 under the DIP Loan Facility. The marketing process for this facility was, therefore,
7 narrowly tailored to a short list of parties that we believed could understand the
8 opportunity and act quickly with reasonable terms. To complete the marketing
9 process, the Debtors compiled a short list of appropriate lenders to solicit, derived
10 from existing networks of Paladin, the Debtors' counsel, and the Committee's
11 professionals. We made targeted phone calls to those parties in order to describe the
12 opportunity and elicit interest. For those parties who were interested in exploring
13 further, we asked that they sign a non-disclosure agreement and provided access to
14 diligence. As part of the diligence process, the Debtors' professionals were made
15 available for calls. In total, we contacted six (6) potential lenders, including the
16 Debtors' existing DIP lender (Serene) and a firm that provides more traditional
17 litigation financing. Of those parties, three (3) executed NDAs and received access
18 to diligence, and only one (1) party – the proposed DIP Lender here – provided an
19 indication of interest towards a DIP facility.

20 10. Without access to the proceeds of the DIP Loan Facility, the Debtors
21 will lack sufficient liquidity to administer these cases and pursue litigation as
22 contemplated and in order to maximize the value of the Debtors' estate. Ultimately,
23 the Debtors engaged with the DIP Lender and successfully negotiated the DIP Loan
24 Facility. The DIP Documents are the result of the Debtors' reasonable judgment that
25 the DIP Lender provided the best (and only possible) postpetition financing option
26 available under the circumstances. The Debtors believe that the DIP Loan Facility

1 provides, among other things, (a) necessary liquidity for the Debtors to pursue the
2 value-maximizing process for the benefit of all parties in interest and (b) economic
3 terms that (i) were the result of arm's-length negotiations with the DIP Lender,
4 (ii) are an integral component of the overall terms of the DIP Loan Facility, and
5 (iii) were required by the DIP Lender as consideration for the DIP Loan Facility.

6 11. It is also important to emphasize that the Debtors coordinated closely
7 with the Creditors' Committee and its professionals in the solicitation process and
8 negotiating the proposed DIP Agreement. I believe that the Creditors' Committee is
9 supportive of the process that we completed, and the final results.

10 12. For these reasons, I believe that the terms of the DIP Agreement will
11 maximize value for the Debtors' stakeholders and are ultimately in the best interests
12 of the Debtors' estates and creditors. Under these circumstances, I further believe
13 that the terms of the DIP Agreement are appropriate, fair, equitable, and should be
14 approved by the Court.

15
16 I declare under penalty of perjury under the laws of the State of California that
17 the foregoing is true and correct.

18
19 DATED this 23rd day of February, 2024.

20
21 

22 _____
Lance Miller